

ARKANSAS COURT OF APPEALS

EN BANC

No. CA08-364 and CA08-365

DUSTIN MCDANIEL, ATTORNEY
GENERAL et al.; ARKANSAS
ELECTRIC ENERGY CONSUMERS
APPELLANTS

V.

ARKANSAS PUBLIC SERVICE
COMMISSION et al.;
ENTERGY, ARKANSAS, INC.
APPELLEES

Opinion Delivered January 21, 2009

APPEALS FROM THE ARKANSAS
PUBLIC SERVICE COMMISSION
[DOCKETS 07-129-U; 06-152-U; 06-
101-U]

APPEALS CONSOLIDATED;
MOTION TO CONSOLIDATE ORAL
ARGUMENTS GRANTED;
MOTIONS TO STRIKE PORTIONS
OF APPELLEES' BRIEFS GRANTED
IN PART, DENIED IN PART; REPLY
BRIEF EXTENSION GRANTED

PER CURIAM

On December 21, 2007, the Arkansas Public Service Commission issued a single order containing rulings in four separate dockets: 06-101-U; 07-129-U; 06-152-U; and 04-023-U. Attorney General Dustin McDaniel and the Arkansas Electric Energy Consumers (AEEC) filed appeals in the first three dockets but not the fourth. Our clerk's office assigned the following case numbers to the appeals: CA08-364 (appeal from Docket 06-101-U); CA08-365 (appeal from Docket 07-129-U); and CA08-366 (appeal from Docket 06-152-U).

In April 2008, appellees Entergy, Arkansas Inc., and the Public Service Commission asked us to consolidate the three appeals. We consolidated only two of them, CA08-365 and CA08-366, assigning them a single case number, CA08-365. Case number CA08-364

remained a separate appeal. The briefing schedule proceeded in both cases.

The Attorney General and the AEEC have now filed motions to strike portions of the appellees' briefs in CA08-364, contending they are not part of the record in that appeal. In particular, they ask that we excise from appellees' arguments and supplemental addenda certain Commission orders, pleadings, and evidence that were filed in the two underlying dockets in CA08-365 and the docket in which no appeal was taken, 04-023-U. For the following reasons, we grant the motions in part and deny them in part.

The motions to strike prompted us to take a second look at the relationship between CA08-364 and the two cases consolidated in CA08-365. As a result of our additional review, we have concluded that the common issues, orders, and factual development in -364 and -365, as well as concerns of administrative efficiency, warrant their consolidation. We therefore consolidate CA08-364 and CA08-365, pursuant to Arkansas Rules of Appellate Procedure - Civil 3(c). Because briefs have been filed in both cases, each will retain its separate case number for administrative purposes. For all other purposes, we will consider the appeals, and the records from each, as consolidated. Our ruling renders moot appellants' motion to strike orders and evidence pertaining to Dockets 07-129-U and 06-152-U, as the appeals from those dockets are now consolidated with CA08-364.

We further deny appellants' motion to strike from appellees' briefs certain orders issued in other Commission dockets, including Docket 04-023-U from which no appeal was taken. Those orders are official rulings by the Commission, available on its website, and subject to our judicial notice. *See generally McKinley v. Ark. Dep't of Human Servs.*, 311 Ark. 382, 844

S.W.2d 366 (1993). We also deny for the reasons set forth in Entergy's response to these motions appellants' motion to strike a particular document, the Energy Cost Recovery Rider, from Entergy's supplemental addendum. However, we grant appellants' motion to strike from the appellees' briefs a hearing transcript, certain testimony, and an application for rehearing filed exclusively in Docket 04-023-U. They are part of a docket from which no appeal was taken and, therefore, are not part of the record on appeal. *See generally* Ark. Code Ann. § 23-2-423(b)(2) (Repl. 2002). Accordingly, we will not consider them in addressing the issues on appeal. *See In re Adoption of H.L.M.*, 99 Ark. App. 115, 257 S.W.3d 587 (2007). We add that nothing in this ruling prohibits our referring to the Commission's discussion of the evidence and pleadings from 04-023-U in its orders.

In light of our consolidation of CA08-364 and CA08-365, Entergy's motion to consolidate oral arguments in those cases is granted. Reply briefs are due in CA08-364 fifteen days from the date of this per curiam.

It is so ordered.